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EXAMINER

ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/658,424

Applicant(s)

LIU ET AL.

Examiner

David E. England

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 – 22 are presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 5, 6 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Iverson et al. (6052379) (hereinafter Iverson).

4. Referencing claim 1, as closely interpreted by the Examiner, Iverson teaches a method for allocating bandwidth in a network appliance where the network appliance includes a plurality of guaranteed bandwidth buckets used to evaluate when to pass traffic through the network appliance, the method comprising:

5. providing a shared bandwidth bucket associated with a plurality of the guaranteed bandwidth buckets, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19);

6. allocating bandwidth to the shared bandwidth bucket based on the underutilization of bandwidth in the plurality of guaranteed bandwidth buckets, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19); and

7. sharing excess bandwidth developed from the underutilization of the guaranteed bandwidth allocated to the individual guaranteed bandwidth buckets including borrowing bandwidth from the shared bandwidth bucket by a respective guaranteed bandwidth bucket to allow traffic to pass immediately through the network appliance, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19).
8. Referencing claim 5, as closely interpreted by the Examiner, Iverson teaches each guaranteed bandwidth bucket is associated with a traffic shaping policy, (e.g. col. 17, line 56 – col. 18, line 19, *“leaky bucket”*).
9. Referencing claim 6, as closely interpreted by the Examiner, Iverson teaches a plurality of guaranteed bandwidth buckets are associated with a single traffic shaping policy, (e.g. col. 17, line 56 – col. 18, line 19, *“leaky bucket”*).
10. Claim 14 is rejected for similar reasons as stated above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 2, 3, 7 – 11, 13 and 15 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson as applied to claims 1 and 5 above, and in view of Ho (6862270).

14. As per claim 2, as closely interpreted by the Examiner, Iverson teaches a shared bandwidth bucket but does not specifically teach tokens in the bucket. Ho teaches tokens in a bucket, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because tokens can be allocated as a set rate, example 1 token equaling 1 kilobyte, which could aid in classifying packets to a type of service or priority given, by the amount of tokens guaranteed to the packet.

15. As per claim 3, as closely interpreted by the Examiner, Iverson teaches a guaranteed bandwidth bucket but does not specifically teach tokens in the bucket. Ho teaches tokens in a bucket, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

16. As per claim 7, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on IP address.

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17. Ho teaches a policy screens based on IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP Source Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because it would be more beneficial in certain situations, for example where low-priority traffic in one LAN group flow is protected from high-priority traffic in a misbehaving (not conforming to specified flow spec) flow when both flows are forwarded through the same wan group/VC.

18. As per claim 8, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on source IP address.

19. Ho teaches a policy based on source IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP Source Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above.

20. As per claim 9, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on destination IP address.

21. Ho teaches a policy based on destination IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP Destination Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above.

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22. As per claim 10, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on protocol type.

23. Ho teaches a policy based on protocol type, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP protocol*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above.

Furthermore, it would be more efficient for a system that processes specific data protocols to filter the data based on protocol type before the data reaches the processor.

24. As per claim 11, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on UDP/TCP port number. Ho teaches a policy based on UDP /TCP port number, (e.g. col. 12, lines 40 – 62, “*parameters such as... TCP/UDP Destination Port Start*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because it would be more efficient for a system to utilize a widely use protocol that most system use than have different protocols that a foreign network is unfamiliar with and will not be able to understand the packet’s format.

25. As per claim 15, as closely interpreted by the Examiner, Iverson in combination with Ho teach all that is similar above in claim 1 as applied to claim 15, Ho further teaches a scheduler operable to

26. evaluate a packet to determine if a traffic shaping policy should be applied to a given packet, (e.g. col. 12, lines 15 – 40, “*QME, FCE, FSE*”),

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27. evaluate a guaranteed bandwidth bucket associated with an identified traffic shaping policy, (e.g. col. 12, lines 15 – 40, “*QME, FCE, FSE*”), and Iverson teaches determine when the guaranteed bandwidth bucket associated with an identified traffic shaping policy has insufficient capacity to support a transfer of the packet through the network, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19), and

28. borrow bandwidth from the shared bandwidth bucket by a respective guaranteed bandwidth bucket to allow traffic to pass immediately through the network appliance, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

29. As per claim 16, as closely interpreted by the Examiner, Iverson teaches a network device comprising:

30. a first bucket configured to receive bandwidth at a first information rate, (e.g. col. 17, line 41 – col. 18, line 20, “*CIR*”);

31. a second bucket configured to receive bandwidth at a second information rate, (e.g. col. 17, line 41 – col. 18, line 20, “*bucket 402*”);

32. a third bucket configured to receive extra bandwidth from the second bucket, (e.g. col. 17, line 41 – col. 18, line 20, “*bucket 404*”, “*BpEsum is the water level value in the second bucket 404 and represents the current accumulated value of unused bandwidth in excess of $CIR+B_c$ (i.e. past overflows from the first bucket 402).*”); and

33. a scheduler configured to:

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34. determine if a size of traffic received at the network device exceeds a bandwidth stored in the first bucket, (e.g. col. 17, line 41 – col. 18, line 20),

35. determine, when the size of the traffic does not exceed the bandwidth stored in the first bucket, if a size of the traffic exceeds a bandwidth stored in the second bucket, (e.g., col. 18, line 32 – col. 19, line 27), and

36. transfer, when the size of the traffic exceeds the number of tokens stored in the second bucket, and appropriate number of tokens from the third bucket to the second bucket so that the second bucket includes a number of tokens that equals or exceeds the size of the traffic, (e.g., col. 18, line 32 – col. 19, line 27). Iverson does not specifically teach the use of tokens. Ho teaches the use of tokens in buckets and refreshing said tokens, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a plurality of guaranteed bandwidth buckets, (first, second, third bucket), since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

37. As per claim 17, as closely interpreted by the Examiner, Iverson teaches

38. causing the traffic to be forwarded after the transfer, (e.g. col. 17, line 56 – col. 18, line 19);

39. decrement the bandwidth in the first and second buckets based on the size of the traffic, (e.g., col. 18, line 32 – col. 19, line 27). Iverson does not specifically teach the use of tokens. Ho

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teaches the use of tokens in buckets and refreshing said tokens, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

40. As per claim 18, as closely interpreted by the Examiner, Iverson in combination with Ho teach all that is similar above in claims 1 – 3, 7 – 11 and 15 – 17 as applied to claim 17, furthermore, Iverson teaches determine if the third bucket includes the appropriate amount of bandwidth, and prohibit the traffic from being forwarded when the third bucket includes less than the appropriate amount of bandwidth, (e.g. col. 18, line 32 – 41). Ho teaches that the buckets contain tokens, (e.g. col. 11, lines 30 – 44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above. Furthermore, it would be obvious to anyone skilled in the art that in transmitting information utilizing token buckets, that if a bucket is void of the required tokens, and there is no other backup source to receive more tokens than it is not possible to transmit a message because all resources are used up and the system would have to wait till the resources were available to transmit said message.

41. As per claim 19, as closely interpreted by the Examiner, Iverson teaches one or more input ports configured to receive traffic from a network, each of the one or more input ports including the first bucket, the second bucket, the third bucket, (e.g., col. 2, lines 64 – 67 & col. 17, line 56 – col. 18, line 19), and Ho more specifically teaches the scheduler, (e.g. col. 12, lines 15 – 40).

42. Claims 13 and 20 – 22 are rejected for similar reasons as stated above.

43. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson as applied to claim 1 above, and in view of Applicant's admitted prior art.

44. As per claim 4, as closely interpreted by the Examiner, Iverson does not specifically teach the guaranteed bandwidth buckets are credit/debit buckets. Applicant's admitted prior art suggests the use of credit/debit buckets being a modified type of token buckets, (e.g. page 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the Applicant's admitted prior art with Iverson because using credit/debit buckets instead token buckets give the system more versatility that token buckets cannot perform, (i.e. credit/debit tokens bucket can be negative).

45. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson and Ho as applied to claims 1 & 5 above, and in further view of Chiruvolu (6839321).

46. As per claim 12, as closely interpreted by the Examiner, Iverson and Ho do not specifically teach the traffic shaping policy screens based on the type of service requested.

47. Chiruvolu teaches the traffic shaping policy screens based on the type of service requested, (e.g. col. 6, lines 19 – 35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiruvolu with the combine system of Iverson

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and Ho because it would be more efficient for a system to give priority to users that has a higher type of service as indicated by their priority bit therefore, meeting the requirements of a guaranteed quality of service.

Response to Arguments

48. Applicant's arguments filed 09/06/2005 have been fully considered but they are not persuasive.

49. In the Remarks, Applicant argues in substance that the prior art of Iverson does not teach or disclose the limitations of claim 1, more specifically providing a shared bandwidth bucket associated with a plurality of guaranteed bandwidth buckets.

50. As to part 1, Examiner would like to draw the Applicant's attention to the sections of Iverson that are cited, in which there are a plurality of guaranteed bandwidth buckets, "buckets 402 and 404". The Applicant is reminded that a bandwidth bucket is not to be taken literally and that a "bucket" is only memory that is sectioned off and to be allocated to specific tasks. The "first bucket" in Iverson is the CIR and what can be considered the "second and third bucket" are buckets 402 and 404. Therefore, it is clear that Iverson teaches a plurality of guaranteed bandwidth buckets. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a plurality of guaranteed bandwidth buckets, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

51. In the Remarks, Applicant argues in substance that Iverson does not disclose or suggest borrowing bandwidth from the shared bandwidth bucket by one of the first and second buckets when the respective bucket has insufficient bandwidth to allow traffic to pass immediately through the network appliance.

52. As to part 2, Examiner would like to draw the Applicant's attention to the prior art of Iverson, columns 17 – 19. In which, one can see that when bandwidth is not enough in on of the buckets, it is "borrowed" from another bucket, e.g., col. 18, lines 32 – 41, "*...the bandwidth is taken form the second bucket 404, representing accumulated unused excess bandwidth, until the level, BpESum, is reduced to zero as noted by arrow 406.*"). Applicant is reminded, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

53. In the Remarks, Applicant argues in substance that Iverson and Ho do not teach the limitations taught in claims 2, 3, 7 – 11, 13 and 15.

54. As to part 3, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

55. In the Remarks, Applicant argues in substance that for the same reasons stated in claim 1, claim 4 is patentable over Iverson and Applicants' admitted prior art.

56. As to part 4, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

57. In the Remarks, Applicant argues in substance that Chiruvolu does not remedy the deficiencies in the disclosure of Iverson set forth above with respect to claim 1.

58. As to part 5, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

59. Applicant's arguments with respect to claims 16 – 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

60. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

De



David E. England
Examiner
Art Unit 2143



DAVID WILEY
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